



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

JUN 23 2003

Mr. David Justin
Vice President
Sunoco Pipeline, L.P.
Ten Penn Center
1801 Market Street
Philadelphia, PA 19103

Re: CPF No. 1-2002-5005

Dear Mr. Justin:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation, assesses a civil penalty of \$5,000, and requires the amendment of certain of your integrity management program procedures. The Final Order also finds that you have completed the Proposed Compliance Order item set forth in the Notice. When the civil penalty is paid and the amendment of procedures completed, as determined by the Director, Eastern Region, OPS, this enforcement action will be closed. The penalty payment terms are set forth in the Final Order. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)

Sunoco Pipeline, L.P.)

Respondent.)

CPF No. 1-2002-5005

FINAL ORDER

On March 5-7, 2002, pursuant to 49 U.S.C. § 60117, representatives of the Eastern and Southwest Regions, Office of Pipeline Safety (OPS) inspected Sunoco Pipeline L.P.'s (Respondent's) integrity management program at Respondent's facility in Philadelphia, Pennsylvania. As a result of the inspection, the Director, Eastern Region, OPS, issued to Respondent, by letter dated July 3, 2002, a Notice of Probable Violation, Proposed Civil Penalty, Proposed Compliance Order, and Notice of Amendment (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 195.452(b), proposed assessing a civil penalty of \$10,000 for the alleged violation, and proposed that Respondent take certain measures to correct the alleged violation. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its integrity management program procedures.

Respondent responded to the Notice by letters dated August 2 and 10, 2002 (Response). Respondent initially contested the allegation of violation, offered an explanation, and requested a hearing. By letter dated January 16, 2003, Respondent demonstrated that it had completed the measures to correct the alleged violation that was proposed in the Notice. By letter dated February 12, 2003, Respondent provided information in mitigation of the proposed civil penalty for the alleged violation, and information outlining certain modifications it made to its integrity management procedures after receiving the Notice. By letter dated February 28, 2003, Respondent provided further information in mitigation of the proposed civil penalty and informed OPS that it was no longer contesting the allegation of violation. By letter dated March 5, 2003, Respondent withdrew its request for a hearing.

FINDING OF VIOLATION

In its Response, as supplemented, Respondent did not contest the alleged violation in the Notice. Accordingly, I find that Respondent violated the following section of 49 C.F.R. Part 195, as more fully described in the Notice:

49 C.F.R. § 195.452(b) -- failing to identify all of its pipeline segments that could affect a high consequence area (HCA) by the December 31, 2001 deadline.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

The Notice proposed a total civil penalty of \$10,000 for violation of § 195.452(b), Respondent's failure to identify drinking water and ecological HCAs in seven states and resulting failure to identify all of its pipeline segments that could affect those HCAs by the December 31, 2001 deadline. A full and accurate identification of all pipeline segments that could affect HCAs is a crucial first step in the integrity management process. Determining which pipeline segments are located in or near HCAs requires first identifying the HCAs themselves. Under § 195.452(b), Respondent was obligated to do so, even where areas meeting the definition of a HCA were not yet designated as such in the Department of Transportation's National Pipeline Mapping System. After receiving the Notice, however, Respondent demonstrated good faith in attempting to come into compliance. In its response letters, Respondent acknowledged that it failed to identify its pipeline segments that could affect the referenced drinking water and ecological HCAs prior to the deadline. Notably, Respondent took timely corrective action and has now identified additional pipeline segments that could affect HCAs after incorporating drinking water and ecological HCAs in Arkansas, Kentucky, Tennessee, Michigan, New York, New Jersey, and Pennsylvania, and has submitted a revised list of its pipeline segments that could affect HCAs to OPS. Respondent has also expressed its intent to bring its integrity management procedures into compliance in accordance with the Notice. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$5,000 for the violation.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25770, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25770, Oklahoma City, OK 73125; (405) 954-4719.

Failure to pay the \$5,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

COMPLIANCE ORDER

The Notice proposed a Compliance Order in connection with the above-referenced violation of 49 C.F.R. § 195.452(b). Respondent subsequently demonstrated corrective action meeting the requirements of the proposed Compliance Order. Respondent has now identified additional pipeline segments that could affect HCAs after incorporating drinking water and ecological HCAs in Arkansas, Kentucky, Tennessee, Michigan, New York, New Jersey, and Pennsylvania, and has submitted a revised list of its pipeline segments that could affect HCAs. Because Respondent's actions satisfy the terms of the proposed Compliance Order, issuance of a Compliance Order is not necessary.

AMENDMENT OF PROCEDURES

The Notice alleged inadequacies in Respondent's integrity management program procedures and proposed to require amendment of Respondent's segment identification procedures to comply with the requirements of 49 C.F.R. § 195.452. In its response letters, Respondent indicated that it had revised several elements of its segment identification procedures. Although these revisions were summarized in the response letters, the revised procedures themselves were not appended. Therefore, there is insufficient information to determine whether the revisions address all of the inadequacies described in the Notice.

Accordingly, I find that Respondent's procedures are inadequate to assure the safe operation of its pipeline system. Pursuant to 49 U.S.C. § 60108(a) and 49 C.F.R. § 190.237, Respondent is ordered to make the following changes to its integrity management program procedures:

1. Amend the procedures to provide adequate technical justification for determining the extent of the air dispersion buffer zones used to identify pipeline segments that could affect HCAs by including an accepted, technically sound vapor cloud dispersion analysis for highly volatile liquid (HVL) pipeline segments.
2. Amend the procedures to provide adequate technical justification for determining the extent of the buffer zones used to identify pipeline segments that could affect HCAs by fully accounting for the flow characteristics of commercially navigable waterways and minor streams in the vicinity of its pipelines that can transport releases of commodity to HCAs.

3. Amend the procedures to provide adequate technical justification for determining the extent of the buffer zones used to identify pipeline segments that could affect HCAs by including an accepted, technically sound land flow analysis using site-specific spill modeling that incorporates factors such as topological and hydraulic gradients that could stretch the spill pool footprint, or alternatively, provide adequate technical justifications demonstrating that the overland flow assumptions being used are consistent with conservative or worst case discharge scenarios.
4. Amend the procedures to include a field validation and quality assurance review of the results of the segment identification process to ensure that all pipeline segments that could affect a HCA have been identified.
5. Within 30 days following receipt of this Final Order, submit the amended procedures and all technical justifications demonstrating compliance with this Order to the Director, Eastern Region, Office of Pipeline Safety, 400 7TH Street, SW, Room 7128, Washington, DC 20590.

The Director, Eastern Region, OPS, may grant an extension of time to comply with any of the required items upon a written request by the Respondent demonstrating good cause for an extension.

Failure to comply with this Order may result in the assessment of civil penalties of up to \$100,000 per violation per day, or in the referral of the case for judicial enforcement.

Under 49 C.F.R. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. However, if the civil penalty is paid, Respondent waives the right to petition for reconsideration. The filing of a petition for reconsideration automatically stays the payment of any civil penalty assessed. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). All other terms of the order, including any required corrective action, remain in full effect unless the Associate Administrator, upon written request, grants a stay. The terms and conditions of this Final Order are effective on receipt.



Stacey Gerard

in Associate Administrator
for Pipeline Safety

JUN 23 2003

Date Issued